

that an estimated 78,000 gallons of wastewater was collected from McElroy's Run. This leak is a violation of section II.2 of the terms and conditions of its permit.

4. On November 8th, 2010 Pleasants Power reported to the WVDEP Spill Report Hot-Line that a leak occurred at one of the pipes leading to the impoundment. In response to the spill, Pleasants power asserts that an estimated 8,000 gallons of wastewater was collected from McElroy's Run. This leak is a violation of section II.2 of the terms and conditions of its permit.
5. On January 7th, 2011 Pleasants Power reported to the WVDEP Spill Report Hot-Line that a leak occurred at one of the pipes leading to the impoundment. In response to the spill, Pleasants Power asserts that an estimated 56,000 gallons of wastewater was collected from McElroy's Run. This leak is a violation of section II.2 of the terms and conditions of its permit.
6. On January 28th, 2011 Pleasants Power reported to the WVDEP Spill Report Hot-Line that a leak occurred at one of the pipes leading to the impoundment. In response to the spill, Pleasants Power asserts that an estimated 34,600 gallons of wastewater was collected from McElroy's Run. This leak is a violation section II.2 of the terms and conditions of its permit.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Pleasants Power shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within forty-five (45) days of entry of this Order, Pleasants Power shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Pleasants Power will replace, repair or rehabilitate the wastewater conveyance system from the power plant to the impoundment necessary to eliminate all unauthorized releases to the environment. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Pleasant Power's permit violations, Pleasant Power shall be assessed a civil administrative penalty of sixteen thousand one hundred ten dollars (\$16,110) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph shall resolve any civil penalty claims for violations of WV/NPDES Water Pollution Control Permit No. WV0023248 reflected in the Findings of Fact of this Order. Payments are not tax-deductible for purposes of State or Federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Pleasant Power hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Pleasant Power agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Pleasant Power does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Pleasant Power other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Pleasant Power shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Pleasant Power becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the

measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Pleasant Power intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Pleasant Power (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Pleasant Power of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Pleasant Power to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Pleasant Power, its successors and assigns.
7. This Order shall terminate upon Pleasant Power's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Allegheny Energy Supply Company, LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

*Photo 1.) McElroy Run on January
29th, 2011.*



*Photo 2.) McElroy Run on January
29th, 2011.*



*Photo 3.) McElroy Run on January
29th, 2011.*

